a bad sense, either of improper association between the sexes or of associating with persons of bad character. A libellous person wrote of Mr. Gladstone that he consorted with loose women; this could not have been supported by proving a single indiscretion but it would have been justified had there been evidence of association with several women, even though he had not been with any one woman on more than one occasion. Similarly Jeffreys, L.C., in his younger days, consorted with disreputable attorneys. There is another plain English sense — "a ship and her consort" — referring to two ships cruising together for mutual protection.

In my opinion, the word "consorting" in these Regulations is best understood with reference to these three meanings. The typical case of a cook (of either sex) or a sewing woman, working in a bandit camp, corresponds to the first ordinary meaning, spouse. The case of a person who lives outside but takes part in supplying goods or information and meets either the same or different bandits on different occasions, corresponds to the second meaning. The third meaning is of less frequent applicant but it arose in *Tan Choon Chuar & Anor.*[1] reported on another point there, two young men went shopping together, visited a cinema, and so on through the evening in the course of which one of them was said to have thrown a grenade; they were admittedly neighbours and acquaintances but there was no evidence that they acted together on any other day; it was a single venture association but went beyond being found in company; the Assessors were directed that this amounted to consorting; the prisoners were convicted and their appeal was dismissed. The fact that they were subsequently pardoned on the ground of doubt as to whether they were correctly identified with the grenade thrower does not affect the point of law. Thus "consorting" covers the case of a person who associates with a bandit or bandits, not necessarily the same individuals, continously over a period, or on a series of separate occasions, or for a single short period with community of purpose.

What I have said is not meant to be exhaustive; in my view, it would be quite wrong to attempt a judicial definition of a term which the Legislature has left undefined but as counsel for the Public Prosecutor intimated that the meaning of the word had caused difficulty in the farming of charges, I have stated the result of my experience which may be of some assistance in applying the Regulations in the future. I do not mean that specific evidence of either continuity or frequency is indispensable but where actual association on one occasion only is proved, consorting will not be made out unless the circumstances strongly indicate that the occasion was either one of a series or one point of time in a continuous association.

Applying these ideas to the present case the evidence, at its highest, shewed only that bandits had called at the house of the accused on two occasions but not that they had ever stayed there or that she had ever gone out with them. In short, it indicated that her son was either a bandit himself or a person who consorted with bandits but it did not show that she herself consorted with them. I therefore acquitted her without calling on her for her defence — on the charge of consorting.

* * * * * * *

[**Editorial Note:** — The remainder of the judgment dealt with questions of fact. The prisoner was convicted of failing to report the presence of armed men but she withdrew her appeal.]

Accused acquitted on the charge of consorting.

In re TAN LIAN BOH, DECD. WEE SIN CHOE & ANOR. v. THE OFFICIAL ASSIGNEE & THE ATTORNEY-GENERAL.

[Orig. Civ. Juris. (Brown, J.) September 27, 1951]

[Singapore — Originating Summons No. 136 of 1940]

Will — Construction of — Partial Intestacy — Effect of provision in a Will excluding widow.

A testator by his Will directed that after his death his second wife Khoo Kow Khiah shall be paid as soon as possible a sum of $25 only and henceforth she shall be severed from all connections or concerns and be forever disallowed to live and interfere with his house properties.

There was an intestacy in respect of the testator's residuary estate and the question arose as to whether the said Khoo Kow Khiah is by the terms of the testator's Will precluded or not from sharing the deceased's residuary estate on an intestacy.

Held, that on the true construction of the Will the said Khoo Kow Khiah was precluded.

Pickering v. Stamford[1], **Naismith v. Boyes**[2] and **Re Holmes**[4] distinguished; **Bund v. Green**[5] followed.

Cases referred to :—

(1) *Pickering v. Stamford* 30 E.R. 1038.
(2) *Naismith v. Boyes* (1899) A.C. 495.
(3) *Johnson v. Johnson* 49 E.R. 361.
(4) *Re Holmes* 62 L.T. 383.
(5) *Bund v. Green* 12 Ch. D. 819.

ORIGINATING SUMMONS.

Harry Lee Wee for the plaintiffs-trustees.
T. Kulasekaram for the Official Assignee.
Eric Choa for Tan Keok Leng (a son).
Philip Hoalim for the widow's personal representatives.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Brown, J. : —It is agreed that the declaration asked for in prayer (1) of the Summons must be made and the issue is upon the question contained in prayer (2) which reads as follows :—

"Whether upon the true construction of clause 3 of the Will, Khoo Kow Khiah, the deceased's second wife or her estate is precluded or not from sharing in the deceased's residuary estate as on intestacy."

There have been three translations of clause 3 of the Will. I do not think that they differ substantially, but for the sake of clarity I will set each out in full :—

1st translation. "After my death my second wife Khoo Kow Kiah shall be paid as soon as possible a sum of $25 only and henceforth she shall be severed from all connections or concerns and be forever disallowed to live and interfere with my house properties."

2nd translation. "After my death a sum of Dollars twenty-five only shall forthwith be paid to my second wife Khoo Kow Kia, and thereafter connection with her shall be severed. She shall not be permitted at all to occupy or interfere with any of the house properties under my name."

3rd translation. "After my death, give as soon as possible to my second betrothed wife, named Khoo Kow Kia a sum of Dollars twenty-five only ($25 to sever connections with her from henceforth. She shall never be permitted to reside in and interfere with the housing properties, which are under my name."

By clause 10 of the Will the testator provided that "after deducting all the above-mentioned different kinds of expenses all my estate shall be handed over to and taken charge by my executors until my son Tan Keok Beng (alias John) attains the age of 30 years." And by clause 11 he provided that "upon my son Tan Keok Beng (alias John) attaining the age of 30 years my executors shall hand back all my estate and properties to my son Tan Keok Beng (alias John) for taking charge." The question of whether upon the true construction of these two clauses the son John was beneficially entitled to the estate was determined by Thorogood, J. in the negative, and he held that the words "for taking charge" in clause 11 imposed a trust for the next of kin.

There is thus an intestacy in respect of the residuary estate; and the question is whether clause 3 bars the widow from taking her share in that intestacy as the deceased's next of kin under the Statutes of Distribution.

Mr. Hoalim, on behalf of the widow's personal representatives, contended that before the widow could be excluded from her right to share in the residue two conditions must be satisfied. Firstly, there must be a partial intestacy on the face of the will. Secondly, the language employed must leave no doubt of the testator's intention. As I understood his proposition it was that here there was no partial intestacy on the face of the will because as a fact the testator had attempted to make a complete disposition of his property, but owing to faulty language the Court had held that his attempt had been unsuccessful. I cannot accept the fact that the testator had attempted to make a complete disposition of his property. And if I could, I could not agree with the proposition that there was not a partial intestacy on the face of the will. There is a partial intestacy on the face of the will when the will, upon a true construction, itself creates a partial intestacy; in contradistinction to a partial intestacy which is caused by some event (such as a death), which occurs after the making of the will, for which the testator has not provided. In the former case if the testator uses language which shews that he is excluding his next of kin not only from any real benefit under his will but from any benefit at all from his estate, the next of kin is not entitled to any share which the law would otherwise give him of that part of the estate of which the testator has died intestate, because the testator has himself provided for the intestacy and has said that he is to have no share in his *estate*, which includes that part of the estate which falls to be distributed upon an intestacy. But in the case of a partial intestacy which is caused by some event occurring after the making of the will for which the testator has not provided, the words of exclusion which the testator used would not deprive his next of kin of his share devolving upon an intestacy which the testator did not contemplate. That is the distinction between the present case, where there is a partial intestacy on the face of the will, and the two cases which were cited of *Pickering v. Stamford*[1] and *Naismith v. Boyes*[2], where the intestacy resulted from the concurrence of events which were subsequent to the making of the will.

At page 525 the learned author of *Jarman on Wills* (7th Edition) puts the distinction in this way :—

"A gift to the widow in satisfaction of all her claims on the testator's estate, does not preclude her from claiming her share of the personalty under the Statutes of Distribution, in the event of the failure of a bequest of that property."

That is where the intestacy results from events which occur subsequently. He goes on to say :—

"With regard to the widow's claim to her share of the personalty, it is said to be different if, on the face of the will, there is an original intestacy as to a part of the personal estate, on the ground that exclusion cannot be represented as auxiliary to any disposition of that portion of the personalty; it must have an independent effect; and the only effect it can possibly have is to exclude the widow from participation in the undisposed part of the personalty."

I do not think that much assistance is to be gained from the decision in *Johnson v. Johnson*[3], which the learned author of *Jarman* suggests is erroneous (page

525) and in a foot-note to page 625 says must be regarded as overruled. There the testator cut off his widow from any part of his property and directed that she should not receive any benefit therefrom. But he made no disposition of his property. The case was unreported. But the decision, which is stated to have been inserted in the Reports "on account of its peculiarity", was that the widow was entitled to her share in the residue under the Statutes of Distribution. There are two distinctions between that case and the present case. In the present case the widow was given $25; and in the present case other dispositions of the property were made, and it was that part of the estate which remained after the dispositions (including the widow's $25) in respect of which there was an intestacy.

In *Re Holmes*[4] there was, as in the present case, a partial intestacy upon the face of the will. The testator excluded all his relatives, except two nieces, "from any and all advantages or benefit in this my last will and testament." Nevertheless it was held that his statutory next of skin were entitled to their shares upon the intestacy. The reason for this was that they were not claiming any benefit under his *will*. They were claiming a right which the law gave them under the Statute of Distribution, whereby they were entitled to their shares in the residuary estate in respect of which the testator had died intestate. It would have been different if the testator had excluded them "from any and all advantages or benefit from my *estate*."

A converse case was *Bund v. Green*[5]. There the testator excluded five of his next of kin from taking any share in his personal estate of which he might happen to die intestate. It is difficult to imagine a more clear direction that these five persons were to be excluded from the shares which the law would otherwise have given them in the residue of the estate, as to which there was an intestacy.

And this, I think, brings me to the real question which I have to decide. Upon the true construction of clause 3 is the testator merely cutting his widow off from any further benefit under his will (as in *Re Holmes*), or is he depriving her also of the share in his residuary estate which would otherwise have been hers upon the intestacy? After the payment of $25 all connection with her is to be severed. This seems to me far more comprehensive than a direction that she is to have no further benefit under the will. It is a direction to his executors that the final act of association with her is to be the payment of $25, and that thereafter she is to have no further 'connection' with his estate or anything else which pertains to him. I have considered the effect of the subsequent words, which exclude her from the house-properties. It has been stated from the Bar that the testator had no house-properties. This strengthens me in my view that his intention was to deprive the widow of any possible claim to which an unexpected change of circumstances might give rise, and I think that *ex abundante cantela* he inserted the final words in clause 3 to make sure that she would not benefit in the possible event of his subsequently acquiring house property.

In my opinion the answer to the question contained in prayer (2) of the Summons is that Khoo Kow Kiah the deceased's second wife or her estate is precluded from sharing in the deceased's residuary estate as on intestacy. I order that the costs of these proceedings be paid out of the estate as between solicitor and client.

Order accordingly.

DAN SIN WAH v. CHAN HAI SWEE.

[Orig. Civ. Juris. (Briggs, J.) September 5, 1951]

[Kuantan — Civil Suit No. 17 of 1950]

Land Code — Power of Attorney — Whether Attorney can sign transfer of land after death of donor — Fraud.

On the 29th September 1944, by an agreement in writing, one Chan Hock Choon sold an undivided half-share of a trust property to the plaintiff. On the 29th December 1945, Chan Hock Choon died. On the 13th July 1950, the plaintiff, purporting to act as an Attorney of Chan Hock Choon, by virtue of an Irrevocable Power of Attorney, registered under the Land Code, executed a transfer of the second undivided half-share of the trust property to himself personally, and on the 24th July 1950 that transfer was registered. At the time of execution of the transfer, the plaintiff admittedly knew that Chan Hock Choon was dead.

Held, that an Irrevocable Power of Attorney does not enable a donee to get a Transfer, signed by himself as Attorney after the death of the donor of the Power, registered under the Land Code.

Cases referred to :—

(1) *Koh Ho Teik & Anor. v. Yeap Lean Seng & Ors.* (1951) M.L.J. 77; 2 M.L.R. 14.

(2) *Assets Co., Ltd., v. Mere Roihi* (1905) A.C. 176 at 120 (P.C.).

(3) *Loke Yew v. Port Swettenham Rubber Co.* (1913) A.C. 491 (P.C.).

(4) *Ong Tin v. Seremban Motor Garage* 1 F.M.S.L.R. 308.

(5) *Yap Thye Cheong v. Wong Kam* 2 F.M.S.L.R. 244.

(6) *Yong Joo Lin v. Fung Poi Fong* (1941) M.L.J. 61; (1941) F.M.S.L.R. 3.

CIVIL SUIT.

A. J. Bostock Hill for the plaintiff.

H. E. P. P. Powell for the defendant.